

CHARTER COMMISSION
CITY AND COUNTY OF HONOLULU

TUESDAY, APRIL 18, 2006
CITY COUNCIL COMMITTEE ROOM
SECOND FLOOR, HONOLULU HALE
2:00 P.M.

MINUTES

Charter Commission Members Present:

Donn Takaki
Andrew Chang
Amy Hirano
Jared Kawashima
Darolyn Lendio
Jerry Coffee
Gordon Grau
Malcolm Tom
James Pacopac
Jeffrey Mikulina – Late 2:10 p.m.
Jan Sullivan – Late 2:10 p.m.
Stephen Meder – Late 2:20 p.m.

Charter Commission Members Absent

Jim Myers -- excused

Others Present:

Chuck Narikiyo, Executive Administrator, Charter Commission
Diane Kawauchi, Deputy Corporation Counsel, Department of the Corporation Counsel
Lori K. K. Sunakoda, Deputy Corporation Counsel, Department of Corporation Counsel
Loretta Ho, Secretary, Charter Commission
Nicole Love, Researcher, Charter Commission

1. Call to Order

Chair Donn Takaki called the meeting to order at 2:03 p.m. on April 18, 2006. Chair Takaki went over housekeeping items and stated that testimony will be limited to three minutes due to the large number of testifiers and must be related to the agenda.

2. Executive Administrator's Report

The Executive Administrator gave a brief report. He recapped the recent community meetings in Kailua, Kapolei, and Hawaii Kai, and noted that they were well attended. He noted that the voting meetings have been set for May 2 and 10, 2006. He explained that the proposals will be broken into two groups for those meetings, and that the tentative breakdown would be disseminated and posted on the website.

He explained that after the last round of review and voting, there was a fair amount of discussion about amending various proposals. Before the next voting meetings, the Commission decided to hold this meeting, to go through possible amendments to proposals before the voting. The purpose of today's meeting is limited to discussion and possibly voting on amendments to the remaining proposals. There will be no voting today on whether to place any proposals on the ballot; this will be done on May 2 and 10. Therefore, testimony at today's meeting will be limited to proposed changes, and testimony on the merits of the proposals will not be entertained. He wanted to make this clear, as the Commission had received a fair amount of written testimony on the merits of proposals.

Finally, he explained that the budget process continued in the City Council, and that he was waiting to hear when they are next needed to be available to testify or answer questions on the Commission's budget request. He thought that it would be sometime in May.

3. Discussion and Action on Amendments to Proposals:

PART 1 – COMBINATION OF HOUSEKEEPING AMENDMENTS

PROPOSAL 51 - Department of Customer Services; Include the Director of Customer Services as a department head who must be nominated by the Mayor, with the advice and consent of the Council, and may be removed by the Mayor.

PROPOSAL 53 - City Council; Allow the Council to designate which Councilmember will serve as Council chair and presiding officer pro tempore when both the chair and vice-chair are absent or disabled.

PROPOSAL 61 - Councilmember terms; Change the beginning time of the terms of Councilmember.

PROPOSAL 75 – Ethics Commission; Include the prohibition against Ethics Commissioners taking an active part in political management or political campaigns set forth in the Hawaii Constitution Article XIV.

PROPOSAL 76 – Police; Delete prohibition of political activities by police department employees.

PROPOSAL 77 – Royal Hawaiian Band; Delete the reference to Royal Hawaiian Band in "Appointment, Confirmation and Removal of Officers and Employees".

PROPOSAL 78 – Civil Defense Agency; Delete the reference to Civil Defense Agency in "Appointment, Confirmation and Removal of Officers and Employees".

PROPOSAL S-6 - Petitions; Delete requirement of Social Security numbers on petitions.

The following individuals testified:

1. Hal Barnes, Assistant to the Mayor
2. William Woods-Bateman

Written testimony:

1. Council Chair Donovan Dela Cruz
2. Councilmember Barbara Marshall

Hal Barnes testified that in reviewing the proposed amendment to Proposal 77 submitted by Council Chair Dela Cruz, the administration did not consider it to be an amendment to an existing proposal but an entirely new proposal. The deadline for submitting proposals has passed. Commissioner Tom asked Mr. Barnes why that was his opinion. Mr. Barnes responded that the original proposal was a housekeeping amendment; this proposal includes a requirement that the bandmaster be confirmed, which is not currently in the charter, and changes the process for setting the bandmaster's salary. Commissioner Tom asked if it was Mr. Barnes' position that the Commission was limited to their ability to make amendments. Mr. Barnes responded that was his position based on the Commission rules and that the public did not have an opportunity to respond to this proposed amendment. They only found out about it today.

****Commissioners Sullivan and Mikulina arrived****

Commissioner Tom noted that the public would have an opportunity to respond and the Commission would be voting on the amendment in two weeks. Commissioner Tom asked for guidance from the Corporation Counsel. Deputy Corporation Counsel Kawauchi responded that it was set in earlier Commission meetings that the Commission would defer discussion regarding possible amendments until after the community meetings, so it was always contemplated that the proposal could be amended. Chair Takaki stated that it was the Commission's discretion as to whether any proposed amendments were within the spirit of a proposal. Deputy Corporation Counsel Kawauchi responded that was her understanding. Chair Takaki asked Mr. Barnes if that was his position and he replied that yes the administration believes the proposed amendment is not within the spirit of the original proposal.

Commissioner Chang asked Mr. Barnes if his objection to the proposal was not only on procedural grounds but also on substantive grounds. Mr. Barnes responded affirmatively. Commissioner Lendio asked whether Mr. Barnes had a chance to review Councilmember Marshall's proposed amendment. Mr. Barnes said that he had not.

William Woods-Bateman testified on proposals 75 and 76. He stated that they could be amended by putting them into Proposal 41, as they cover the same subject matter.

Chair Takaki asked Executive Administrator Narikiyo how to proceed. Commissioner Lendio commented on the issue of combination of proposals. Commissioner Lendio said that in her opinion Proposals 51, 53, 75, 77 and 78 are policy proposals and not simple housekeeping proposals. Proposals 61, 76 and S-6 are housekeeping, technical amendments. She thinks the others are not and would object to combining them. With regard to Mr. Woods-Bateman testimony, she still believes that Proposal 41 may be too complex. Therefore she's not convinced that the combination suggested by Mr. Woods-Bateman should not be

implemented. Commissioner Lendio stated she thinks Proposal 76 stands on its own and that there is a legal opinion that directly addresses the issue, so she does believe it is a technical amendment only.

Commissioner Sullivan commented she considers Proposal 35 as a housekeeping measure as well. Commissioner Tom agreed. Commissioner Tom asked Commissioner Lendio about Proposal 51, his impression was that it was a technical correction to a previous oversight. Commissioner Lendio responded she considered it a policy consideration because the voters voted for it after the last Charter Commission.

**** Commissioner Meder arrived ****

Deputy Corporation Counsel Kawauchi noted that with respect to Proposal 77 that provision in 4-104.1 refers to department heads and the Royal Hawaiian Band does not hold that position. Commissioner Lendio noted that if the Commission were to amend Proposal 77 as suggested in the written testimonies submitted by Council Chair Dela Cruz and Councilmember Marshall, then it would be a policy charter amendment rather than a merely technical one. She agreed with Corporation Counsel that the amendment as currently drafted is a housekeeping amendment.

Commissioner Mikulina suggested that Proposal S-10 also be considered a housekeeping amendment.

Chair Takaki asked if there was anyone else who wanted to testify on the possible combination of proposals, and there were no further testifiers.

Chair Takaki asked the Commissioners if anyone had amendments to:

Proposal 51 – NONE

Proposal 53 – NONE

Proposal 61 – NONE

Proposal 75 – NONE

Proposal 76 – NONE

Proposal 77 – NONE

Proposal 78 – NONE

Proposal S-6 – NONE

Chair Takaki asked if there were any Commissioners opposed to placing Proposal 35 into a combined housekeeping amendment. There was no opposition. Chair Takaki asked if there were any Commissioners opposed to placing Proposal S-10 into a combined housekeeping amendment. There was no opposition.

ACTION:

Commissioner Lendio moved that the Commission combined the following proposals into a single item for purposes of the ballot: Proposals 61, 76, S-6, S-10, 35. Commissioner Pacopac seconded that motion. Discussion followed.

Commissioner Sullivan asked whether the housekeeping amendments would be considered as a whole for purposes of the next meeting. She asked what might happen if the Commission was in favor of some but not all of the combined amendments. Chair Takaki responded the intent is to put all the proposals in the final language for the voting in May. Commissioner Lendio asked whether it would be an option to place on the agenda for the voting meeting, the combination of proposals for the ballot. Commissioner Chang stated that he would support adding the combination issue to the agenda for the next voting meetings so that the Commission would have some additional options. Commissioner Hirano asked if by voting to combine any items proposals today, whether that meant that the Commission is approving them for the ballot. Commissioners Lendio and Chair Takaki responded no. Commissioner Mikulina stated that there were two concerns that the Commission should keep in mind, first whether the housekeeping proposals should be combined and second whether this might limit the voters' options if, for example, they were in favor of Proposal "A" and not in favor of Proposal "B" but had to consider them together. Chair Takaki asked Executive Administrator Narikiyo if it would be acceptable to combine the proposals today. Executive Administrator Narikiyo responded that he thought that the Commission would address the combination issue today in concept and that the actual combination would be done after voting is completed on the individual proposals.

Chair Takaki asked Corporation Counsel if the Commission could combine items at the same meeting during which the individual items are voting upon. Deputy Corporation Counsel Kawauchi stated that that would be acceptable as long as it is properly noticed.

Based on the discussion, Commissioner Lendio withdrew her motion.

PART 2 - PROPOSALS SUBJECT TO AMENDMENTS AS DRAFTED OR PREVIOUSLY RAISED

PROPOSAL 9 - Neighborhood Commission; Establish direct relationship between Commission and Executive Secretary.

Among other possible amendments, the Commission will discuss whether to combine various concepts raised in various Neighborhood Board and Neighborhood Commission-related proposals.

PROPOSAL 13 - Neighborhood Commission; Revise the Powers, Duties and Functions of the Neighborhood Commission.

Among other possible amendments, the Commission will discuss whether to combine various concepts raised in various Neighborhood Board and Neighborhood Commission-related proposals.

PROPOSAL 31 - Impeachment; Provisions re impeachment of elected officials are invalid; options to correct the charter.

Among other possible amendments, the Commission will discuss the form and intent of this proposal.

PROPOSAL 45 - Board of Water Supply; Amend qualifications of Board Members.

Among other possible amendments, the Commission will discuss changes to the proposed qualifications of board members.

PROPOSAL 55 - Term Limits; Re term limits for Councilmembers.

Among other possible amendments, the Commission will discuss alternatives to address issues relating to future reapportionment.

PROPOSAL 86 - City Council; Increase the number of members on the City Council from 9 to 11 or 13.

Among other possible amendments, the Commission will discuss this proposal should specify 11, 13, or some other number as an increase to the current composition of the City Council.

PROPOSAL 91 - Property Taxes and New Fund; Set aside one-half percent (1/2%) of real property tax revenues for land and natural resources protection and one-half percent (1/2%) of real property tax revenues for affordable housing.

Among other possible amendments, the Commission will discuss whether this proposal should address relief for the homeless rather than affordable housing.

PROPOSAL 96 - Environmental Bill of Rights; Add new article with an "environmental bill of rights" for current and future residents.

Among other possible amendments, the Commission will discuss changes to the statement and consider possible charter sections in which it may be appropriate for placement.

PROPOSAL S-9 - Department of Transportation Services - Revise Powers, Duties and Functions; Promote pedestrian- and bicycle-friendly city

Among other possible amendments, the Commission will discuss whether to delete the proposed new section 6-170_ , "It shall be a priority of the department of transportation services to make Honolulu a pedestrian- and bicycle-friendly city"

The following individuals testified:

1. William Woods-Bateman
2. Darlene Heine
3. John Goody
4. Kristi Schulenberg, Hawaii Bicycling League
5. Denise DeCosta and Glen Takahashi, Office of the City Clerk
6. Josh Stanbro
7. Laure Dillon

Written testimony:

1. Gene Young, President and Robert McGraw, Co-Chair Public Issues Committee, Hawaii Chapter of the American Planning Association
2. Council Chair Donovan Dela Cruz
3. Jimmy Toyama, Chair, Oahu County Committee
4. Anita Naone, President, Hawaiian Civic Club of Honolulu
5. Ethelreda R. Kahalewai, President, Ewa-Pu'uloa Hawaiian Civic Club
6. Nalani Kahoano Gersaba, President, Oahu Council Association of Hawaiian Civic Clubs
7. John Goody
8. Kristi Schulenberg, Executive Director, Hawaii Bicycling League
9. Scott Snider

William Woods-Bateman testified that he believed Proposals 9 and 13 could be combined.

Darlene Heine testified in favor of Proposal 91. She explained that she is the Program Director for the Waikiki Health Center Caravan Program. She wanted to address the possible amendment regarding relief for the homeless vs. affordable housing. Ms. Heine explained she was present on behalf of Partners in Care, which is an organization of approximately 60 non-profit and governmental agencies and they had met that morning. She noted that affordable housing is homeless assistance. She noted that there is a lack of low cost rental housing, which contributes to homelessness. She suggested that if the Commission wanted to amend the proposal, it should cover those that make 50% or less of the median income. Commissioner Tom asked her to expand her reasoning behind suggesting the 50% figure. Ms. Heine responded that a figure of 30% has also been proposed by other groups, but that this may make the housing more difficult to maintain. She stated the 50% figure was more reasonable and would cover a wider range of beneficiaries.

John Goody testified in opposition to the amendment for Proposal S-9. Chair Takaki asked him to clarify his position. Mr. Goody explained he is in favor of keeping the language adding a new section to the charter. Commissioner Lendio asked Mr. Goody if, by adding the words "and bikeway" to the transit provision of the Charter, this makes the proposed new section unnecessary. She explained that she had a concern with adding the other language to the charter, because she felt that it could confuse the priorities. Mr. Goody responded that he believed the language was necessary to recognize the historical neglect of the rights of bike riders and pedestrians. Commissioner Mikulina asked Mr. Goody if bikeways alone make the city bicycling and pedestrian friendly. Mr. Goody responded no, he thinks it's the overall design of the mix of transportation including roadways and buses. Commissioner Mikulina asked if in his experience working with the department, what was his impression as to the priority of DTS. Mr. Goody responded that DTS was obviously working hard on transit related issues, and that if you look at their work, it is almost exclusively dedicated to cars. It is woefully out of balance. Commissioner Coffee noted that there was an article in this morning's paper regarding an elevated contra-flow lane. Commissioner Coffee noted that perhaps Commissioner Lendio's point was well taken, that if the Commission were to elevate bikeways and pedestrians to the level of transit, then conceivably that projects such as the elevated lane could also include a bike lane. Mr. Goody responded that he believes we tend to underestimate the potential for bikeways as a need of getting people into town. He cited Amsterdam as an example. He also noted in some Mainland cities, 10-15% people commute by bike. Commissioner Grau asked if the proposed amendment would accommodate bike paths in addition to bikeways. Commissioner Mikulina explained that part of the purpose for this amendment is to have the Department look at bicycling and pedestrian traffic as options for reducing automobile traffic. He added that the additional section to the Charter would be a statement that Hawaii is the health state and that our county is a bicycling and pedestrian friendly place. Commissioner Lendio read the proposed language adding a subsection "e" to Charter Section 6-1703, and that she had a lot of problems with that language. She believed it was vague and poorly drafted. She stated it would be difficult to determine whether or not the requirements of the section have been met. She also had similar concerns with the language "bicycle-and-pedestrian friendly city." Her concern is if we leave this language in the proposal, it may be defeated at the polls. She again voiced her support for simply adding the words "and bikeways" to the existing

language. Commissioner Mikulina agreed that there were some problems with the language, but that he would be willing to allow the voters to decide whether the term bicycle-and-pedestrian friendly is sufficiently understandable. He felt that the proposal was visionary and made a broad policy statement.

Kristi Schulenberg, Executive Director of the Hawaii Bicycling League testified in opposition to the possible amendment to Proposal S-9. She echoed Mr. Goody's statements. She also believes that the voters would support this amendment in its present form.

Denise DeCosta, City Clerk, testified that their office had provided some informational testimony related to Proposal 86. The information also included material on redistricting, cost impact and elections. Commissioner Lendio asked if there were any attendant costs related to the staggering of Council terms passed following a previous Charter Commission. Mr. Takahashi responded that he was not aware of any, but that he had started with the Clerk's office after the staggering occurred. Commissioner Lendio asked if there would be costs associated with hold over Councilmembers. Mr. Takahashi responded that if the number of Councilmembers is increased, using a hold over system might cause some problems. Commissioner Tom asked the Clerk's office to expand on their written testimony regarding elections following reapportionment. Mr. Takahashi noted that the next reapportionment would probably occur in 2011 and the next election would be 2012. He was not sure how it would be addressed mechanically. Commissioner Tom asked when the last reapportionment occurred. Mr. Takahashi replied he believe it was 1991. Commissioner Tom asked if a similar problem had occurred at that time. Mr. Takahashi responded it was a little different in 1991 because there was also a State reapportionment at that time. The State changes took effect in the 1992 elections but the City changes did not take effect until the 1994 elections. Since then, Mr. Takahashi believes that the system has been adjusted so that there would be less voter confusion. Commissioner Tom asked if the present problem was created when staggering was instituted in 1998. Mr. Takahashi stated he believed that was the correct timing. Commissioner Chang asked if the Clerk's Office has any thought of whether increasing the number of Councilmembers would lead to an increase in the efficacy of city government. Ms. DeCosta responded she would leave that to the voters.

Josh Stanbro testified on behalf of Trust for Public land stood on the written testimony and invited any questions.

Laure Dillon testified on Proposal 91. She wanted to put out the idea that it should be 1% for each of affordable housing and open space rather than ½% as these are very important issues. It is also makes good business sense and would be good for the economy. Commissioner Grau noted that the higher the percent could decrease the chances of approval by the voters and asked if she had considered that. Ms. Dillon responded that she believed that the voters are in strong support for these concerns.

Commissioner Sullivan asked Mr. Stanbro if under the language for the Kauai and Maui charters has there been any problem in using these funds for a budget item that would have been funded any way. Mr. Stanbro responded that on Kauai and Maui they have used the funds to leverage other money for purposes outside of usual operations. It hasn't been the practice. It is usually taken the form of partnerships with other organizations. Commissioner Sullivan asked if it would be two separate funds for the two separate purposes and asked

Mr. Stanbro if he had any thoughts of how the funds would be administered. Mr. Stanbro responded that in creating language they didn't want to micromanage and explain that Maui and Kauai handle it differently. Kauai County uses a Commission and Maui County has a slightly different structure administered through the finance department. Whatever the Council here decides is the best way to administer the fund; it should be left to them.

Mr. Stanbro, answering a question previously raised by Commissioner Grau, cited a recent poll that showed 70% of Oahu voters would be in support of setting aside 2% of revenues for open space and affordable housing. He noted that both Maui and Kauai had 73% approval at the polls for similar amendments.

Commissioner Mikulina noted the language in the proposed amendment regarding payments or bonds made prior to enactment of the amendment, and asked if Mr. Stanbro would prefer retroactive or prospective application. Mr. Stanbro responded they would rather see it prospective if it is applied retroactively the spending would be dollar for dollar and they would be able to leverage the funds.

Commissioner Lendio asked if the polls Mr. Stanbro cited were taken before the State's Legacy Lands Act was passed. Mr. Stanbro responded that it was taken after the bill was passed but before the Governor signed it. Commissioner Lendio asked if the amendment would be redundant in light of the Legacy Lands Act and would it be better to focus efforts to preserve open space through the state instead. Mr. Stanbro responded that the strongest possible structure to have in acquiring lands is to have a strong county fund and a strong state fund as well as a strong federal delegation. The county fund represents a local commitment, which is often a factor in obtaining leveraged funds. The State Legacy Lands fund works in a similar fashion so it is important for each county to have a fund in order to be on a level playing field with the other counties. Commissioner Lendio asked whether this could be done without a separate fund and through the regular budget process. Mr. Stanbro replied that this could be done but the drawback is that you are tied to the budget cycle. If something comes up suddenly such as the Waimea Valley situation, it could be a relatively quick process. Commissioner Lendio disagreed that the Waimea Valley situation had just popped up but that it was the matter of the level of public awareness. Commissioner Chang noted that perhaps that it would be better to leave these type of matters to the Council rather than specifically earmarking the funds in the Charter. It might take away some of the flexibility the Council would have and the ability to weigh all the different factors that might go into these type of decisions. If people consider these issues to be that important they can go to the Council and express their preferences. Chair Takaki reminded those in attendance that the purpose of this meeting was to discuss amendments rather than the merits of the proposal. Mr. Stanbro said that he would wait to continue the discussion at the voting meeting.

Chair Takaki asked the Commissioners if anyone had amendments to the proposals below.

Proposal 9 – NONE

Proposal 13 – Commissioner Tom had a proposed amendment to this proposal. Commissioner Tom prepared a handout (**Attachment #1**). He explained the rationale for his proposed amendment. He believed that one of the key issues was who should have oversight over the Neighborhood Commission's Executive Secretary. He felt the current

proposal might be an overreaction to recent problems and that the supervision of the Executive Secretary should be left with the administration. He explained the changes as reflected on his handout.

Commissioner Lendio noted she liked it better than the original proposal. She would not support the current version of Proposal 13 but might reconsider if it is amended.

- **ACTION:**

Commissioner Tom moved to amend Proposal 13 as reflected in his handout. Commissioner Lendio seconded that motion. Discussion followed.

Commissioner Sullivan asked Commissioner Tom for clarification on his ramseyer format. Commissioner Tom explained that he ramseyered the existing proposal and not the existing charter. Commissioner Tom went through the differences between his proposed amendment and the current charter language.

Commissioner Mikulina asked Commissioner Tom what his concern was with regard to the current proposal language regarding assisting neighborhood boards in establishing lines of communication. Commissioner Tom explained that he believed that those functions should be the responsibility of the Executive Secretary and the staff.

AYES:	CHANG, COFFEE, GRAU, HIRANO, KAWASHIMA, LENDIO, MEDER, MIKULINA, PACOPAC, SULLIVAN, TOM – 11
NOES:	TAKAKI - 1
EXCUSED:	MYERS – 1

MOTION PASSED

Proposal 31 – NONE

Proposal 45 – Commissioner Mikulina has proposed three changes; reduce the number from two of the appointed members shall have substantial experience in either water resource management, etc. to one, and at least one member shall have substantial experience or expertise in traditional Hawaiian water resource management techniques. He also proposed to delete the last clause that referenced the Hawaii Revised Statutes, which is not appropriate in the Charter.

He feels these changes would be in tune with the testimony they have received and would also be consistent with the State legislation.

Commissioner Tom asked Commissioner Mikulina if he would be open to considering applying the requirement to all members rather than to just the appointed members, as it is hard enough finding qualified people to serve on the board. Commissioner Mikulina stated that he would assume that the Chief Engineer of the Department of Facility Maintenance would have this type of expertise so it would be nice if one of the appointed members would have this as well. Commissioner Mikulina asked if any of the attorneys present had an opinion as to whether the same person could fulfill the water resource management requirement and the native Hawaiian water use knowledge requirement. Several Commissioners noted that because the word “and” was being used instead of the word “or,”

it could probably construed as two separate people. Commissioner Hirano asked if she voted in favor of the amendment, does that mean she is voting in favor of the issue. Chair Takaki replied that a vote for the amendment does not mean that she has to vote for the proposal in May.

Commissioner Sullivan expressed that the wording may be too restrictive. Commissioner Mikulina noted that the language was identical that passed by the State Legislature and that the State Legislature felt that there were a sufficient number of qualified candidates. Commissioner Lendio expressed her concerns with the proposal. She believed that the Board of Water Supply and State Water Commission are two separate entities with two separate roles. Commissioner Kawashima asked Commissioner Mikulina if the word "substantial" was contained in the HRS provision and Commissioner Mikulina replied that it was.

Commissioner Mikulina made an additional proposal for amendment. In light of the discussion, he proposed an amendment that would require that only one of the appointed members have substantial experience or expertise in traditional Hawaiian water resource management techniques, traditional Hawaiian riparian and appurtenant water usage, and related traditions and customs dependent on natural water supplies. Commissioner Chang has a point of information. He asked what the certification process was to ensure that appointees meet these requirements. Commissioner Mikulina responded that he believes that this would fall on the Council to make that determination during the confirmation process.

- **ACTION:**

Commissioner Mikulina moved to amend Proposal 45 to read, "provided that one of the appointed members on the Board of Water Supply at any time have substantial experience or expertise in traditional Hawaiian water resource management techniques, traditional Hawaiian riparian and appurtenant water usage, and related traditions and customs dependent on natural water supplies." Commissioner Grau seconded that motion. Discussion followed.

Commissioner Grau asked if it would be fair to ask his fellow Commissioners if passing this amendment would have an effect on the likelihood of support for the amendment. Commissioner Hirano expressed a similar concern.

AYES:	COFFEE, MEDER, MIKULINA, TOM - 4
NOES:	TAKAKI, CHANG, GRAU, HIRANO, KAWASHIMA, LENDIO, PACOPAC, SULLIVAN - 8
EXCUSED:	MYERS - 1

MOTION FAILED

Commissioner Coffee moved to take a 5-minute recess. Commissioner Lendio seconded that motion.

****RECESS 3:56 p.m.****

****Commissioner Meder left****

****RECONVENE 4:05 p.m.****

- **ACTION:**

Following the recess Commissioner Mikulina made a second motion to amend Proposal 45 to read, "provided that one of the appointed members on the Board of Water Supply at any time shall have experience in traditional Hawaiian water resource management techniques." Commissioner Sullivan seconded that motion. Discussion followed.

Commissioner Chang asked Commissioner Mikulina to explain the benefits of having such a person on the board. Commissioner Mikulina explained that he felt it would be beneficial to have someone with this type of knowledge at the table.

Commissioner Sullivan stated she was not sure if she would be voting for the proposal but she acknowledged Commissioner Mikulina's efforts and would be supporting the amendment and urged others to do the same.

AYES: COFFEE, GRAU, KAWASHIMA, MIKULINA, SULLIVAN, TAKAKI, TOM - 7
NOES: CHANG, HIRANO, LENDIO, PACOPAC - 4
EXCUSED: MEDER, MYERS - 2

MOTION PASSED

Proposal 55 – Commissioner Lendio asked Corporation Counsel regarding their recent opinions on the reapportionment issue. Commissioner Lendio explained that she feels strongly about this issue and that the reapportionment problem should be addressed now. She asked Corporation Counsel regarding incumbent Councilmembers and whether they can hold over for two years. Deputy Corporation Counsel Spurlin responded that there have been several legal decisions across the nation holding that it is not a Constitutional violation of the "one person, one vote" policy. The court recognized that in some instances, someone could be represented by a representative they did not vote for, that is the result of staggering and it is acceptable because it is for a short period of time. Commissioner Lendio asked if two years would be a short period of time. Deputy Corporation Counsel Spurlin responded that it would be under the rulings they looked at. Commissioner Lendio asked if Corporation Counsel had any comment on the Clerk's comments that they would not prefer a holdover situation. Deputy Corporation Counsel Spurlin responded that she was not certain as to the practical problems, but the other concerns were more policy issues. Commissioner Lendio asked if they did nothing now and the Reapportionment Commission reconvenes in 2010, would that leave people without representation? Deputy Corporation Counsel Spurlin replied no that would be the hold over situation.

Commissioner Lendio asked whether Corporation Counsel believed that both term limits and staggered terms could be retained in light of the upcoming reapportionment. Deputy Corporation Counsel Spurlin replied that yes and that that was her understanding as to what the Commission wanted them to review. Deputy Corporation Counsel Spurlin added that it

may have been presented to the Charter Commission that term limits caused the problem; she wanted to make it clear to the Commission that term limits do not cause the problem, and that it was staggering. Commissioner Lendio asked whether retaining the current two-term limit system would cause the most problems. Deputy Corporation Counsel Spurlin replied yes.

Commissioner Lendio passed out a handout of her proposed amendment (**Attachment #2**). She had a problem with the current form of the proposal; she felt it was more a global issue than more of a specific one. She stated she was an advocate of term limits but realized some of the other Commissioners are in favor of doing away with term limits. Commissioner Lendio drafted her proposal to include alternative situations and noted that a similar form of proposal was made in 1972. She presented a set of alternatives relating to staggering because she believes that staggering is the problem. She noted that she believes the problem should be addressed now, because they don't have control the reapportionment situation but they do have control in addressing the staggering. She explained the alternatives that she was proposing. She realized the question may cause some voter confusion but she believed it was drafted simply enough to allow people to make a choice as to whether or not they wanted to keep term limits. Commissioner Lendio believed that staggering of term limits should be eliminated because it was causing too many problems with the upcoming reapportionment.

Commissioner Grau asked if a voter voted "no" on the first part of the proposal, would they still be able to vote on alternatives "A" and "B" in the second part of the proposal? Commissioner Lendio responded no. Commissioner Grau then asked if the voters voted "yes" on the first part of the proposal, would a sub-majority then decide which of the two alternatives would be implemented? Commissioner Lendio responded she did not know. She asked staff for the figures of the 1972 results. She went over the results compiled for both 1972 and 1980 ballot questions that were phrased in the alternative. Commissioner Lendio noted that the 1972 the main question was passed but in 1980 the main question was not passed so the voters did not get to the second part of the question. Commissioner Grau then asked if 51% of the voters approved the first part of the question and then 51% of those voters select alternative "A", which is approximately 26% of all voters, would that 26% percent effectively be deciding the term limits question? Commissioner Lendio responded that she was not sure.

Commissioner Tom agreed with Commissioner Lendio regarding the staggering issue. Commissioner Tom asked Corporation Counsel to reiterate some of their previous statements for clarification. He asked Commissioner Lendio, as a hypothetical, if someone was elected in 2004 under alternative "A" and then ran again in 2008, wouldn't that person be looking at only 6 years in office? Commissioner Lendio responded that that person's term limit would end in 2012. Commissioner Tom clarified his question noting that under Commissioner Lendio proposal such person would have only a two-year term limit in 2008. Commissioner Lendio responded that that would be true under the redistricting. Commissioner Tom asked wouldn't it be fairer to allow that person to allow them to serve a full four year term. Commissioner Tom suggested that he thought it might be fairer to allow those people to serve two full four-year terms. Commissioner Lendio noted that there may be problems associated with redistricting, in particular having a voter represented by someone they did not vote for. Commissioner Tom noted that that was why he asked Corporation Counsel to confirm that hold over for two years was legal and acceptable.

Commissioner Tom noted that it had been presented in previous testimony that term limits were the problem, but it's really staggering, so if you extend the terms in 2010 and have everyone run again in 2012, there would be no more staggering. Commissioner Lendio asked whether this would be applied retroactively or prospectively. She noted that it would depend on when you pass the law, but she thought it would be prospective. Commissioner Tom agreed it would be prospective but noted that term limits are already in place. Commissioner Lendio asked whether this meant someone would be in office for five terms. Commissioner Tom replied that he did not think so; if someone served in 2004 and 2008, they would not be able to run again. Commissioner Lendio responded that this would be retroactive application. Commissioner Tom noted that term limits are already in place. He stated that if someone ran in 2010, they would have a two year term followed by two four year terms. Commissioner Lendio noted that was one of the scenarios presented by Corporation Counsel.

Commissioner Kawashima understood Commissioner Tom's concerns but noted that he is one who would be in favor of presenting an alternative to eliminate term limits. He understood that Commissioner Lendio's proposed amendment recognized that there were some Commissioners who favored eliminating term limits. Commissioner Tom expressed some concerns with the alternative format because it could lead to a minority of the voters making such an important decision. Commissioner Tom felt it might not be appropriate and thought that the language could be confusing. Commissioner Lendio presented some further information from staff in 1972, the main question was passed by 83% of the votes and of that vote 48.9% voted for option one and 34.9% voted for option two. Commissioner Tom noted that this was a minority of the voters.

Commissioner Mikulina expressed concern that this would be a difficult question for the voters to understand and that if you look at it there are really four options. He suggested that it might be better to allow everyone to choose between alternative "A" and "B", regardless of their position on the main question. This way people that vote "no" on the main question would still have a say as to which alternative passes.

Commissioner Tom stated that he believed that there should be two votes, the first vote would be whether or not to keep term limits, the second vote would be whether or not to eliminate staggering. He did not think you could combine it into one question with two alternatives. So he suggested that those would be the two questions under an amended proposal. Commissioner Sullivan commended Commissioner Lendio for her efforts but noted that she is not in favor of doing away with term limits so would not support the amendment. In the current combined form Commissioner Lendio asked Commissioner Sullivan if she would be opposed to extending the term limits to an additional one more term. Commissioner Sullivan responded that conceptually that would be one way to address the issue and it would be preferable to her than combining the issues.

Chair Takaki stated that he would be in favor of the amendment and that it is better than what is currently in place. Commissioner Grau stated that he would be inclined to go along with the suggestion made by Commissioner Mikulina. Commissioner Lendio stated she could live with that, because that would address Commissioner Tom's concern of having a minority potentially deciding the issue. Commissioner Tom said that he would be open to that but felt the Commission was avoiding the issue of term limits. Commissioner Lendio stated that she was not comfortable in making that decision and wanted to leave it to the

electorate. She noted also that if this passes the Council may want to revisit the question to whether to extend the Mayor's term limits as well, because under a strong Mayor, strong Council system what's good for the goose is good for the gander. She again expressed that it is very important to address the reapportionment situation because the voters' power to elect whom they would want to represent them is the ultimate power. Commissioner Tom again asked for clarification, that under alternative "A" someone who runs in 2004 would run again in 2008 but only for a two-year term. Commissioner Lendio confirmed this.

Commissioner Sullivan asked Commissioner Lendio if she would be willing to change the language under alternative "B" to change three term limits back to two term limits. Commissioner Lendio stated that if that was the case, someone who ran in 2004 would be only able to run for a two year term in 2008 which would be 6 years which she felt was too short. Deputy Corporation Counsel Spurlin pointed out for clarification that the reapportionment would not take effect until 2012. Commissioner Tom asked if Commissioner Lendio is willing to amend alternative "B" to include two four year term limits instead of three? Commissioner Lendio stated that what she was trying to accomplish was establishing one point in time where all Councilmembers would start from a clean slate with no more staggering. Commissioner Tom stated that under his suggestion, this would be 2012. Commissioner Tom recapped his suggestion as changing 2008 to 2010 and changing 2010 to 2012 and the term limit is two terms. Commissioner Lendio asked if this would be applied retroactively because if someone ran in 2004 and was re-elected in 2008 they would not be able to run again in 2012. Commissioner Tom explained that his reason behind this was mainly integrity, that people voted for Councilmembers with the understanding that there would be a two-term limitation. Commissioner Lendio replied that if the voters passed this charter amendment, then obviously they would have changed their minds. Commissioner Lendio stated that she generally she has a problem with retroactive application. Commissioner Tom suggested that perhaps the problem could be addressed by merely eliminating staggering. Commissioner Lendio stated that that was not the intent of her amendment, so she would not consider Commissioner Tom's proposal to be a friendly amendment.

Commissioner Lendio stated that she could live with Commissioner Sullivan's suggestion of changing it to two consecutive four-year terms but that it should have prospective application. Because then everyone who is running for City Council in 2010 and the voters supporting those candidates would have the expectation that the candidate would be in office no more than 8 years from that point.

- **ACTION:**

- ***First motion:*** Commissioner Lendio moved to amend Proposal 55 in accordance with her drafted handout (**Attachment 2**). Commissioner Hirano seconded that motion.
- ***Second motion:*** Commissioner Mikulina then moved to amend Commissioner Lendio's proposed amendment to separate the proposal into two separate ballot questions. Commissioner Grau seconded that motion. Discussion followed.

Commissioner Mikulina explained that the reason for his amendment to the amendment was

so that those who do not vote yes on the main question would still have a say on the alternatives if the main question passes.

SECOND MOTION VOTES:

AYES: CHANG, COFFEE, GRAU, HIRANO, KAWASHIMA, LENDIO, MIKULINA,
PACOPAC, SULLIVAN, TOM - 10
NOES: TAKAKI - 1
EXCUSED: MEDER, MYERS – 2

MOTION PASSED

- **Third motion:** Commissioner Tom moved to further amend the amendment, in alternative “B” to delete the section about serving a maximum of three consecutive four year terms and simply say, “the staggering of Councilmember terms shall be eliminated”; then change “2008” to “2010” and change “2010” to “2012”. Commissioner Lendio asked Commissioner Tom to clarify whether his intent was for retroactive application. Commissioner Tom responded that this was the current law. Commissioner Coffee seconded that motion. Discussion followed.

Deputy Corporation Counsel Spurlin noted that in 2010 the even-numbered Council districts would be running, not the odd-numbered districts. Commissioner Tom clarified that odd should be changed to even. Commissioner Lendio noted she would be voting against the amendment. She stated that City Councilmember should not be subject to a law that was passed in 2006 and she has a real problem with retroactive application. Commissioner Mikulina noted he would be supporting the amendment, but did suggest that the proposal should be made clear that the alternatives are to either keep or eliminate term limits. Commissioner Tom agreed that this would be advisable. Commissioner Coffee asked Commissioner Lendio what would be the practical affect of retroactive application. Commissioner Lendio responded the effect would be that the City Councilmembers in the even-numbered districts would be termed out and would not be able to run again for office.

THIRD MOTION VOTES:

AYES: COFFEE, GRAU, MIKULINA, SULLIVAN, TOM - 5
NOES: CHANG, HIRANO, KAWASHIMA, LENDIO, PACOPAC, TAKAKI - 6
EXCUSED: MEDER, MYERS – 2

MOTION FAILED

**FIRST MOTION VOTES: (MAIN MOTION WITH THE AMENDMENT APPROVED
WITH THE SECOND MOTION)**

AYES: TAKAKI, CHANG, COFFEE, GRAU, HIRANO, KAWASHIMA, LENDIO,
MIKULINA, PACOPAC, SULLIVAN, TOM – 11

NOES: NONE - 0
EXCUSED: MEDER, MYERS – 2

MOTION PASSED

Proposal 86 – Commissioner Lendio stated she doesn't see any reason for this proposal and with jeopardizing after dealing with the reapportionment issue, she doesn't feel they should deal with whether or not they should increase the number of City Council. Commissioner Grau commented whether the Commissioners vote for the proposal or not, they should know which number they are voting for. Commissioner Chang asked if they were bound to making an amendment to either 11 or 13. Chair Takaki replied he doesn't believe so and that they could choose a number.

• **ACTION:**

Commissioner Grau moved to amend Proposal 86 to increase the Council size to 13. Commissioner Mikulina seconded that motion. Discussion followed.

Commissioner Mikulina noted that he would be supporting that amendment because of math, by looking at the research that the staff Researcher has done. Since back in the 1970s when the voters picked 9 members, the population has grown nearly 40% since that time. He also commented they should increase the number of Councilmembers to have better representation. Commissioner Chang stated he would be voting against the amendment proposed because he feels it's an arbitrary number, and would like to vote for an increase to 18, which is just as arbitrary. Commissioner Coffee stated he would be supporting the amendment for the same reasons as Commissioner Mikulina stated. He commented he knows there would be some expense and problems and feels those should be subordinate to the basic philosophy of representation. Commissioner Hirano stated the research that Researcher Love has done was a compilation of population versus the number of Councilmembers and Honolulu looks like it right in line with the population base between 850,000 - 950,000 and feels we are okay with 9 members.

AYES: COFFEE, GRAU, KAWASHIMA, LENDIO, MIKULINA, PACOPAC, SULLIVAN,
TAKAKI, TOM - 9
NOES: CHANG, HIRANO - 2
EXCUSED: MEDER, MYERS – 2

MOTION PASSED

Proposal 91 – Commissioner Mikulina suggested one amendment to have the proposal prospective and would delete the last sentence in section two, "the payment of interest, principle and premium if any includes bonds issued prior to enactment of this section."

Commissioner Kawashima asked if the language kept in doesn't preclude them from prospective application. Commissioner Mikulina responded yes.

Commissioner Tom passed out a handout (**Attachment #3**) of a proposed amendment for consideration. Commissioner Tom explained his proposed amendment. He stated there are two issues, one is land and one is affordable housing; his proposed amendment breaks

up those points. The first proposed amendment is to add the word “maintaining” in the first sentence under number two, sentence to read; “Half of the moneys in this fund, or ½% of certified real property tax revenues shall be utilized for maintaining or purchasing or otherwise acquiring lands or property entitlements for land conservation in the city and county of Honolulu for the following purposes: protecting watershed lands to preserve water quality and water supply;”

Commissioner Tom noted affordable housing is not part of the other counties and is something new and has been added for Oahu. He suggested putting in a limitation of what the housing could be for. He noted the testimony received today was for 50% of the median of household income on Oahu. He said the funds would be used for affordable housing for those residents whose income is 50% or less or what is considered to be a very low income. Commissioner Tom stated by limiting it to 50% it's limiting to those that need it, and it includes transitional housing and homeless relief, and they are not making a differentiation between homeless or affordable housing. He went on to say the other change, in addition to using the funds to acquire it, would be to use it to maintain that affordable housing. Commissioner Tom stated his last change is in number four, it reference three types of bond issues; Sections 3-116, 3-117 and 3-118. He noted the proposal is to delete Section 3-118 regarding revenue bonds – and revenue bonds are usually issued by private-for-profit, whereas the other two are issued by the City itself. He went on to say he doesn't know if they would like the funds used by a third party outside the city. He explained usually tax revenues are used to pay the debt service.

Chair Takaki asked Commissioner Tom if his proposed paragraphs coincide to the original proposal. Commissioner Tom responded his proposal is to break down number one in the original proposal into three paragraphs and renumber paragraph two which is changed to number four in Commissioner Tom's handout. Commissioner Lendio clarified that Commissioner Tom was retaining paragraphs three, four and five, but they are renumbered. Commissioner Tom responded yes.

Commissioner Hirano asked a philosophical question regarding whether that is how they should use real property tax. She went on to say that affordable housing, homeless and the environment are good issues, but she's not convinced that they should take a percentage of the real property tax and that is what it should be used for. She stated she has problems with putting this in the charter unless she can be convinced otherwise. Commissioner Tom stated the staff's research showed \$2.5 million out of \$500 million dollars of property tax revenues, and every dollar counts, and there is an increased need for addressing affordable housing and the homeless problem. He stated he feels it's more of a policy statement that they should be spending more money on those areas, or else they are not going to be fixing the problem. Commissioner Hirano agreed but stated it should not be done via the charter and should be dealt with at a different level.

Chair Takaki asked Commissioner Tom if he was okay with Commissioner Mikulina's earlier statement deleting the last sentence, which is now paragraph four of Commissioner Tom's handout. Commissioner Tom asked Commissioner Mikulina to clarify, he thought Commissioner Mikulina said prospectively and he asked Commissioner Mikulina if he did not want to use it for any debt services. Commissioner Mikulina clarified not for decisions previously made. Commissioner Tom clarified what Commissioner Mikulina stated – he does not want the funds to be used for bonds that were issued prior to the date of

enactment – and said he is okay with that.

Commissioner Mikulina stated he appreciates Commissioner Tom amendment, but is objected to allowing the ½% for the land fund to be used for maintaining the land. He feels it should be reserved strictly for purchasing the resource value lands, agriculture easements, watersheds and the like and would hate to see it to maintaining soccer fields and the like. He stated he thinks it's more important to use the monies to purchase the lands, and if the lands need maintaining, that's either up to the private sector or regular funds that they use for the soccer parks. Commissioner Tom responded he was not talking about soccer parks, but for example, forestlands where there are erosion issues and they have to be cut back. Commissioner Tom stated he would be willing to remove the maintenance reference if that is an issue for Commissioner Mikulina. Commissioner Grau stated he echoed Commissioner Mikulina and would be willing to vote for the maintenance of affordable housing but not for the maintenance of land.

Commissioner Lendio stated the way she reads Commissioner Tom's proposed change is "maintain or purchase", which is an option. She commented with regard to affordable housing, she agreed if they are going to purchase it, they should maintain it as well.

Commissioner Sullivan commented she has additional proposed language to follow Commissioner Tom's language. She stated she supports the policy questions of the proposal in concept and feels there are two different issues. She went on to say in the non-profit sector when it comes to land acquisition for conservation purposes, it is very similar to non-profit in affordable housing sector where normally no one entity can finance it; normally what's required is complicated with different sources of funding, in order to acquire or put together a project. Commissioner Sullivan shared her concern that the Commission not establish a fund that replicate the problems that we are dealing with today in affordable housing, and the language she would like to see is that the monies should be used for a permanent base of housing which should be rental housing, not rental housing that would be sold in 10 years at market price like they are experiencing today. She commented it should be targeted to transitional housing and emergency housing. Her proposed additional language would follow Commissioner Tom's proposed language, paragraph three first sentence: "shall be utilized to provide and maintain permanent rental housing for persons earning less than 50% of the median household income in the city and county of Honolulu as well as transitional housing and emergency shelters."

Commissioner Grau commented he would like to see the word "for sale" in the proposal. He believes the reason for having the word "for sale" is because it allows groups like Habitat for Humanity to access the funds. He went on to say there are a number of organizations around the country through partnerships make housing available to families who earn 50% or less of the median income to be able to purchase housing and maintain it themselves. Commissioner Sullivan stated she would not object to Commissioner Grau's suggestion if he was proposing to have it remain affordable. Commissioner Grau responded yes, there are ways that the organizations he mentioned force the affordable option to be maintained throughout the history of the home. Commissioner Sullivan responded her concern is traditionally in the City and County of Honolulu when it says "for sale" affordable housing or rental housing, it has never been interpreted to mean permanent affordable housing. Commissioner Tom commented by defining the income level, they are accomplishing the same objective that Commissioner Sullivan wants.

Commissioner Pacopac stated all of the ideas of the proposal create the funds, and asked where would the funds come from and who would implement the funds and who would be responsible for making the decisions. Commissioner Sullivan responded her understanding of the proposal on the table that is not amended with the proposed amendment, leaves for the Council to establish by ordinance procedures for the Administration and expenditures. Commissioner Pacopac clarified it would be the Administration? Commissioner Tom clarified they would need an ordinance passed. Commissioner Pacopac clarified the ordinance would come from the Council or Administration directing the Administration to implement the proposal. Commissioner Sullivan clarified the proposal does not say the Administration would administer the funds. Commissioner Pacopac asked who would administer the funds. Commissioner Sullivan replied it's not an answered question and stated that is why she asked Trust for Public Land on how its done on Maui and Kauai, because the language of proposal is the same or similar to what they used, but on one island the Council administers it, and on another island there's an appointed Commission that administers it.

- **ACTION:**

Commissioner Tom moved to amend Proposal 91 to add his proposed amendment (***Attachment #3***). He would like to eliminate the word "maintenance" in paragraph two. In paragraph three, last sentence, change the period after the word rental to a comma and add "provided that the housing remain affordable in perpetuity". In paragraph four, first sentence, after the word issued, add "subsequent to enactment and". Commissioner Grau seconded that motion. No discussion followed.

AYES: COFFEE, GRAU, KAWASHIMA, LENDIO, MIKULINA, SULLIVAN, TAKAKI,
TOM - 8
NOES: CHANG, HIRANO, PACOPAC - 3
EXCUSED: MEDER, MYERS – 2

MOTION PASSED

Proposal 96 – Commissioner Mikulina suggest to amend the proposal in the first paragraph, second sentence, capitalize the "n" in the word Native Hawaiians. He also suggested two options for the Commissioners to consider. His first option is to eliminate the phrase "in rendering a decision" in the first paragraph second sentence. His second alternative would be to add "consider the impacts on" after the word "city" and delete the word "protect".

Commissioner Lendio suggested "The city shall protect Native Hawaiian rights and natural resources for future generations to enjoy." She stated it's much broader. Commissioner Mikulina agrees.

Commissioner Sullivan asked if this proposal could be put somewhere in the charter instead of creating a new article. Commissioner Mikulina responded there is a catchall Article XIII, but he thought of elevating it on its own and provides that vehicle for future amendments.

- **ACTION:**

Commissioner Mikulina moved to amend Proposal 96 to add the new section to Article XII called "Environmental Bill of Rights - The city shall protect Native Hawaiian rights and natural resources for future generations to enjoy." Commissioner Grau seconded that motion. Discussion followed.

Commissioner Sullivan stated she doesn't like Article XIII and suggest inserting the proposal into Article II – "Powers and Purposes of the City" – creating Section 2-103. Commissioner Mikulina took Commissioner Sullivan's suggestion as a friendly amendment.

AYES: CHANG, GRAU, HIRANO, KAWASHIMA, LENDIO, MIKULINA, PACOPAC,
SULLIVAN, TAKAKI, TOM - 10
NOES: COFFEE - 1
EXCUSED: MEDER, MYERS – 2

MOTION PASSED

PROPOSAL S-9 – Commissioner Lendio suggested to delete paragraph "E".
Commissioner Mikulina agreed to delete paragraph "E".

- **ACTION:**

Commissioner Grau moved to amend Proposal S-9 to delete "paragraph E", Commissioner Lendio seconded that motion. No discussion followed.

AYES: TAKAKI, CHANG, COFFEE, GRAU, HIRANO, KAWASHIMA, LENDIO,
MIKULINA, PACOPAC, SULLIVAN, TOM - 11
NOES: NONE - 0
EXCUSED: MEDER, MYERS – 2

MOTION PASSED

PART 3 - DISCUSSION AND ACTION ON REMAINING PROPOSALS

CATEGORY A - DEPARTMENTS AND PERSONNEL

PROPOSAL 27 - Liquor Commission and Civil Service; Exempt Liquor Control Administrator and Deputy Administrator from civil service.

PROPOSAL 33 - Department of Emergency Services; Revise the Powers, Duties and Functions of the Director and the Department.

PROPOSAL 35 - Department of Information Technology; Revise the Powers, Duties and Functions of the Director.

PROPOSAL 36 - Fire Chief; Revise the Powers, Duties and Functions of the Fire Chief and the Fire Department.

PROPOSAL 49 - Office of Council Services; To authorize the attorneys in the Office of Council Services to serve as legal advisers and legal representatives of the City Council along with the Department of Corporation Counsel.

PROPOSAL 56 - Fire Chief; Establish a 5-year term of office for the Fire Chief.

PROPOSAL 57 - Transportation; Establish a new, temporary agency in the city to develop the new public transportation system to be funded by the tax surcharge.

The following individuals testified:
NONE

Written testimony:
NONE

Chair Takaki asked the Commissioners if anyone had amendments to:

PROPOSAL 27 - None
PROPOSAL 33 - None
PROPOSAL 35 - None
PROPOSAL 36 - None
PROPOSAL 49 - None
PROPOSAL 56 - None
PROPOSAL 57 - None

CATEGORY B - PLANNING, ZONING, AND ENVIRONMENT

PROPOSAL 7 - Sustainable Community Plans and Development Plans.

PROPOSAL 21 – Planning and Zoning; Establish urban growth boundaries and agricultural protection zones.

PROPOSAL 22 - Planning Commission; Restore the position of Executive Secretary.

PROPOSAL 32 - Planning Commission; Establish deadlines for Mayor and City Council to act on certain Planning Commission recommendations.

PROPOSAL 47 – Planning and Zoning; Establish urban growth boundaries.

PROPOSAL 69 - Planning and Zoning; Require 2/3rds vote for Planning Commission and City Council before agricultural land can be converted to urban use.

PROPOSAL 71 - Department of Environmental Services; Require the Director to develop and administer a curbside recycling program.

PROPOSAL 98 - City Buildings and Department of Design and Construction; Require City Council to adopt green building standards for city buildings, revise Department of Design and Construction duties to comply with green building standards.

PROPOSAL 99 - Development Plans and Zoning; Require that when an acre of land is converted from agricultural or preservation designations, an acre of land will be converted to those designations, ensuring no net loss of agriculture or preservation lands.

The following individuals testified:
NONE

Written testimony:

1. Rocky Dallum, Outreach Director, Green Building Initiative

Chair Takaki asked the Commissioners if anyone had amendments?

Executive Administrator Narikiyo advised the Commissioners there was an amendment submitted to the Commission regarding Proposal 33, which was submitted by the department and is different than what was originally voted on during the review process.

Commissioner Sullivan asked to take a five-minute recess, Commissioner Pacopac seconded that motion.

RECESS – 5:46 p.m.
RECONVENE – 5:51 p.m.

- **ACTION:**

Commissioner Tom moved to amend Proposal 33 to use the supplemental language provided by the Emergency Services Department, Commissioner Grau seconded that motion. Discussion followed.

Commissioner Lendio stated she would like to hear from the Department regarding their proposed changes because they are significant changes and there hasn't been public testimony on the proposed amendment. Commissioner Tom responded he believed they received testimony at the Hawaii Kai meeting and there were specific points such as the enabling authorization to provide near-shore rescues, respond to those emergencies, and by having it in the charter, when a 911 call comes in, they'll get a call as well. Chair Takaki explained the supplement under "A and B" it deletes reference to City and County of Honolulu.

AYES: TAKAKI, CHANG, COFFEE, GRAU, HIRANO, KAWASHIMA, LENDIO,
MIKULINA, PACOPAC, SULLIVAN, TOM - 11
NOES: NONE - 0
EXCUSED: MEDER, MYERS – 2

MOTION PASSED

Chair Takaki returned to Category B and asked the Commissioners if anyone had amendments to:

PROPOSAL 7 – None

PROPOSAL 21 – Commissioner Sullivan had a proposed amendment for urban growth boundaries and it could be for Proposal 21 or 47 (**Attachment #4**). She explained her concern is historically there has been a challenge in not creating layers of land use approvals. She went on to say over the last 10 years, the decision was made to do away with the annual review. Commissioner Sullivan clarified at one point in time there was the general plan, development plan and zoning. The development plans were done on an annual basis and the department had a process for adopting a development plan and revised it every year. The complaint was that it was replicating zoning and was another process doing similar things. She stated the decision was made to move to these development plans, which were supposed to be longer term planning maps as well as goals and policies. She went on to say when that was done, there was also a decision made that they were not going to be reviewed every year and were meant to be longer range planning documents. Commissioner Sullivan stated what was adopted and called Sustainable Community Plans though that is not what is in the charter. She stated there are 8 Development Plans for the City and County of Honolulu and all of them that have been adopted with maps as well as all of the policies and plans. Commissioner Sullivan stated her concern with the proposal is she feels it's not a good thing to constantly go back and forth in how they are choosing to regulate and plan land use in the city. She continues to say they made a decision to try and have a long-range bigger picture plan and to not have that changed every year. She stated she doesn't think it's a good idea to establish something now called "Urban Growth Boundary"; the proposal says it's a conceptual plan and doesn't say it's a metes and bounds boundary again. She went on to say if it's a conceptual boundary, why create another process if it already exists in the charter in a method they already have.

Commissioner Sullivan commented that is what she is trying to replicate in her proposed language is a process the County is following right now, but does not address the two-thirds vote issue nor does it address the section that proposes revising the zoning provision. She commented if the two-thirds vote would be considered, it should be considered in Proposal 69, which deals with a two-thirds vote in a more general way.

Chair Takaki asked Commissioner Sullivan if they should amend one of the proposals to include her proposed language. He noted he understands it was a general comment, but she didn't identify any specific proposal to amend. Commissioner Sullivan responded either Proposal 21 or 47.

Commissioner Mikulina stated it would make sense to get rid of one of the identical proposals and replace with a new idea. Secondly, the interface between Ag protection zones, which he feels aren't defined also in the proposals, and urban growth boundaries, which are arguably would consist with what are in place now and handles community plans and the general plans. He states that is Urban Growth Boundaries, and if they look at the Sustainable Community Plan, there is a dark dashed line, which he doesn't think that's what they call it but in essence that what it is until the Sustainable Community Plan is amended.

He went on to say he thinks they already have those and feels Proposal 69 makes sense and would accomplish the same things without all the problems.

Commissioner Lendio stated she would support this proposed amendment in replacement for Proposal 21, leaving Proposal 47 intact.

Deputy Corporation Counsel Dawn Spurlin asked if this proposal was similar to Proposal 7. Commissioner Sullivan stated she incorporated the terminology. Deputy Corporation Counsel Spurlin then asked if they were going to have two proposals with the same amendment to the same provision. Chair Takaki stated Proposal 7 changes the word, and Commissioner Sullivan changed more than the word.

Commissioner Chang asked Commissioner Sullivan if her proposed amendment would be for both Proposal 7 and 21. Commissioner Sullivan responded it would be for Proposal 21, because it's not identical to Proposal 7. Chair Takaki clarified they are amending Proposal 21 with Commissioner Sullivan's proposed language.

• **ACTION:**

Commissioner Tom moved to amend Proposal 21 with Commissioner Sullivan's proposed language amendment; Commissioner Lendio seconded that motion. Discussion followed.

Commissioner Tom asked Commissioner Sullivan if the Sustainable Community plans are updated every five years. Commissioner Sullivan responded they are supposed to be updated. Commissioner Tom then asked Commissioner Sullivan if, to implement her proposal, it would take awhile before the urban boundary lines are done. Commissioner Sullivan responded no, as Commissioner Mikulina stated correctly, the current plans actually have lines.

AYES:	TAKAKI, CHANG, COFFEE, GRAU, HIRANO, KAWASHIMA, LENDIO, MIKULINA, SULLIVAN, TOM - 10
NOES:	PACOPAC - 1
EXCUSED:	MEDER, MYERS – 2

PROPOSAL 22 - None

PROPOSAL 32 - None

PROPOSAL 47 – None

PROPOSAL 69 – Commissioner Sullivan stated the language is difficult to interpret. She stated for the State Land Use Commission there is specific language in the HRS requiring 6 affirmative votes from the Commission when doing a boundary amendment of a certain type. But that pertains to conversion to petitions over 15 acres. She went on to say there was a distinction made between minor conversions versus larger scaled ones. She stated she's not certain it makes sense to apply this proposal to everything that goes through the department. She said her concern is that the wording is overly broad. Commissioner Mikulina responded the thinking was from the agricultural zoning to the urban uses. He stated there are two types of Ag zoning and about a dozen types of urban zoning. He said he feels it's better to keep it broad, and say if you are taking farmland or plan zone as Ag

converting it to urban use, it would require the two-thirds vote or that one additional vote they have on the Council. He clarified it would not be applied to every rezoning, but it would only apply to taking Ag land and converting to urban use. Commissioner Mikulina stated they could specify a number but they would tied to that. Commissioner Sullivan asked why would it not be applied to preservation-zoned lands. Commissioner Mikulina responded there is little preservation land.

Commissioner Tom stated he has the same question about preservation but also about country zoning too. He asked Commissioner Mikulina if they would like to include preservation and country zoning. Commissioner Mikulina responded if they specify them, they would be tied to it and those are specified by the land use ordinance and should the Council decide a couple of years to change country to rural zoning then the charter would have to be changed. Commissioner Coffee suggested using the term of conversion from "non-urban" to urban.

Commissioner Hirano asked if this belongs in the charter. Commissioner Mikulina responded for him it does. He goes on to say if they are going to specify voting requirements, the Charter seems to be the only place to do it. He noted if they had this done by ordinance, saying it would require a two-thirds vote by ordinance but it would only require a majority to change the law, it would create some absurd situation where if the Council really wanted to rezone something they could just change the law to require a simple majority, pass it and change it back to a supermajority again. He went on to say it makes it a moot point if they are held to a higher standard than setting a standard itself.

- **ACTION:**

Commissioner Mikulina moved to amend Proposal 69 to read: "Any zoning ordinance permitting the conversion of non-urban land to urban uses shall require an affirmative vote of at least two-thirds of its entire membership." Commissioner Grau seconded that motion. Discussion followed.

Commissioner Sullivan asked if the land is clearly inside the Urban Growth Boundary, which was the long-range planning document, would it make sense to apply this to a situation like that? Commissioner Mikulina responded they are only adding one more vote to the process.

Commissioner Chang asked Corporation Counsel if the Council passed an ordinance that can put into law whatever the community desired relative to the issues on land use. Deputy Corporation Counsel Diane Kawauchi responded yes. Commissioner Chang commented his reservation to the issue because the issue is so complex and because the impact is so large, he would rather leave this to the deliberative body, which is the City Council, because once they put it in the Charter, he doesn't know if they've taken away the flexibility for the community to respond to the issues. He clarified with Corporation Counsel that what the proposal is trying to achieve could be done through the legislative process. Deputy Corporation Counsel Kawauchi responded there was an opinion they rendered with respect to the point the Commissioner Mikulina made regarding the requirement of the two-thirds vote. She noted that while they opined in that memo that it could be done by way of ordinance, their office's preference is that it be placed in the Charter, with something like a supermajority vote should be in the Charter. Commissioner Lendio followed up to that

response stating the City Council could pass a Charter proposal amendment to put on the ballot.

Commissioner Mikulina stated he has one other amendment, he realized there are two sections Section 6-1511 and 6-1514. He noted the amendment also applied to Section 6-1511. Adoption of the General Plan and Development Plan, changing the word “agricultural” to “non-urban”.

AYES: COFFEE, GRAU, KAWASHIMA, LENDIO, MIKULINA, SULLIVAN, TOM - 7
NOES: TAKAKI, CHANG, HIRANO, PACOPAC - 4
EXCUSED: MEDER, MYERS – 2

PROPOSAL 71 – Commissioner Tom suggested to amend “paragraph F” to put in the word “comprehensive” to say: “Develop and administer a ‘comprehensive’ curbside recycling system”. Commissioner Mikulina noted he’s happy with the proposed amendment, and could be added on to paragraph E to read: “The administrator or the director shall develop and administer solid waste collection, processing and disposal systems including a comprehensive curbside recycling system”.

- **ACTION:**

Commissioner Mikulina moved to amend Proposal 71 to amend paragraph E to read: “Develop and administer collection, processing and disposal system, including a comprehensive curbside recycling system”, and to delete paragraph F. Commissioner Tom seconded that motion. No discussion followed.

AYES: TAKAKI, COFFEE, GRAU, HIRANO, KAWASHIMA, LENDIO, MIKULINA, SULLIVAN, TOM – 9
ABSTAIN - CHANG - 1
NOES: PACOPAC - 1
EXCUSED: MEDER, MYERS – 2

PROPOSAL 98 – None

PROPOSAL 99 – Commissioner Mikulina suggested to limit it to no net loss of “preservation land”. He goes on to say if people are contemplating or choosing to take land out of the preservation zoning then they must put land into preservation zoning.

- **ACTION:**

Commissioner Mikulina moved to amend Proposal 99 to delete reference to “agricultural” in Section 6-1511.3 and Section 6-1514. Commissioner Grau seconded that motion. Discussion followed.

Commissioner Lendio stated she would be voting the amendment because it takes out “Ag” lands.

AYES: COFFEE, GRAU, KAWASHIMA, LENDIO, MIKULINA, PACOPAC, TOM – 7
NOES: TAKAKI, CHANG, HIRANO, SULLIVAN - 4
EXCUSED: MEDER, MYERS – 2

CATEGORY C – ETHICS AND STANDARDS OF CONDUCT

PROPOSAL 28 - Ethics Commission; Allow the Ethics Commission to impose civil fines.

The following individuals testified:
NONE

Written testimony:
NONE

PROPOSAL 30 - Ethics, Charter Commission, Reapportionment Commission; Include the members of the Charter and Reapportionment Commissions as city officers for purposes of the ethics laws.

The following individuals testified:
NONE

Written testimony:
NONE

No amendments by the commissioners present.

PROPOSAL 41 - Standards of Conduct; Codify within the charter existing state law and provide uniform standards of conduct within all city entities.

The following individuals testified:
1. William Woods-Bateman

Written testimony:
NONE

Mr. Woods-Bateman testified his amendment was given out at the last public meeting. He stated he wanted to amend the issue about the HPD to remove the prohibition for political activities. He went on to say if this proposal is passed during the next public hearing to add the Ethics Commission and Liquor Commission issues into this proposal as well. He noted his last amendment was regarding the next to the last section, which was to eliminate that section there and put in the provision that the City Council would create appropriate ordinances and or rules making to enact the effectiveness of those measures.

Commissioner Lendio stated it's a lot to digest and suggested it would be possibly better to try and get the amendments done by ordinances versus putting them in the Charter beyond the declaration of policy. She went on to say she liked the declaration of policy but felt it's too broad and vague and overwhelming for the voters to determine what he is proposing. Mr. Woods-Bateman responded he thinks it's very simplistic and stated there is a section created over time called the standards of conduct and there is not a new element in terms of the standards of conduct, the conflicts of interest, the ethics issues, the equal opportunity and the other issues listed. He stated the issue is that most people in the public perceive that all elements of the city are covered across the board and fair and expect them to have the same conduct in whatever they do. Mr. Woods-Bateman went on to say they know it's not true because the opinions they have had, the decisions that have happened and the people are checked out in terms of ethics violations, conflicts of interest or equal opportunity are not the standard. He went on to say another issue that is not covered in the Charter is contractors. Mr. Woods-Bateman stated they are not altering anything but updating in terms of the current statutes in terms of equal opportunity. He went on to say it's not creating a new entity.

Commissioner Lendio stated two points in his comment regarding contractors. She stated in 1995 she tried to enforce an ordinance passed by the City Council to not allow people who do business with city to make political campaign donations and that was struck down by the Circuit Court. The Circuit Court basically said unless the State law is changed, the City really can't pass a law because it is preempted by State Law. She noted she thinks that was the emphasis of trying to change the State law. She went on to say beyond that she's looking at it practically and there are very lofty, idealistic goals that she thinks are based on very good intentions, but her concern is that she doesn't think the public would vote for the proposal in its current form because they won't understand the proposal. She noted the intentions are great and think they are on the same page where they all want to adhere to high ethical standards of conduct. Mr. Woods-Bateman said he appreciated Commissioner Lendio's comments.

- **ACTION:**

Commissioner Lendio moved to amend Proposal 41 with Mr. Woods-Bateman's proposal with regard to Liquor Commission, HPD and Ethics Commission. Commissioner Coffee seconded that motion.

AYES: TAKAKI, CHANG, COFFEE, GRAU, HIRANO, KAWASHIMA, LENDIO,
MIKULINA, PACOPAC, SULLIVAN, TOM – 11
NOES: NONE - 0
EXCUSED: MEDER, MYERS – 2

Commissioner Sullivan asked Chair Takaki if she could propose to amend Proposal 28. Chair Takaki allowed Commissioner Sullivan to go back to Proposal 28 in Category C. Commissioner Sullivan propose to delete the words "and employees" in Section 11-106 and Section 11-107 because there was an issue of potential double jeopardy where collective bargaining contracts already have their own mechanisms for dealing with civil service employees. She went on to say that if they limit it as just "officers," that would address that concern.

- **ACTION:**

Commissioner Sullivan moved to delete the words “and employees” in Section 11-106 and Section 11-107. Commissioner Lendio seconded that motion. Discussion followed.

Commissioner Grau asked what constitutes an employee. He then commented if they want to exclude those employees covered by collective bargaining, they should state that. Commissioner Chang commented with the implication that exempt employees are not going to be affected by double jeopardy.

Chair Takaki asked Chuck Totto, Executive Director and Legal Counsel of the Ethics Commission, to clarify. Chuck Totto clarified there are definitions in the Charter as to what an “officer” and “employee” are. He goes on to say they are ranging into an area where he thinks the concern is more in double jeopardy and not collective bargaining employees. He stated anyone can be subject to employment double jeopardy and it doesn’t have to be just a civil service employee. He goes on to say the notion is to avoid employment double jeopardy. That could be handled by ordinance, but if it’s unlawful the Commission could not do it. He stated he doesn’t think there is a need to make that distinction in the charter. He went on to state another problem may be encountered whether or not it is legal to make a distinction between officers who are elected officials, and officers who may have important fiscal power or discretionary authority. He explained when they start classifying those people with different potential penalties, fines or non-fines, you would have to have a rational basis for that. Mr. Totto stated he personally believes that there is a rational basis if they just focus on elected officials because they don’t have appointing authorities that can discipline them. He went on to say if they start making a distinction between the category of collective bargaining employees versus other, there are exempt employees, excluded employees, exempt and excluded employees, and collective bargaining employees. He stated if they try to fine through the Charter, it would be difficult, but he does think that employment double jeopardy is something that has to be avoided. He explained this means the Ethics Commission and the appointing authority wouldn’t penalize the employee for the same misconduct, and stated it’s unfair and inappropriate. He went on to say they have had opinions from Corporation Counsel when a department took a disciplinary action while the Ethics Commission was in the course of their investigation. Mr. Totto stated the Commission determined the misconduct they were citing was a little different and sent over their recommendation to the department so they know it was a serious issue. The department’s response was they were precluded by the concern over employment double jeopardy that they couldn’t penalize the person as the Commission had requested. Chair Takaki asked Mr. Totto if they should just put “elected officials.” Mr. Totto responded no that they should leave it as is in its entirety.

AYES: CHANG, HIRANO, LENDIO, MIKULINA, SULLIVAN - 5
NOES: TAKAKI, COFFEE, GRAU, KAWASHIMA, PACOPAC, TOM - 6
EXCUSED: MEDER, MYERS – 2

CATEGORY D - BUDGET, COUNCIL, AND OTHER PROCEDURES

PROPOSAL 1 - Salary Commission; Amend provision regarding Council review of Commission findings.

The following individuals testified:

NONE

Written testimony:

NONE

No proposed amendment by the Commissioners present.

PROPOSAL 34 - Budget; Administration and enforcement of the executive capital budget ordinance -- lapse in 12 rather than 6 months.

The following individuals testified:

NONE

Written testimony:

NONE

PROPOSAL 52 - Budget; Require that the Mayor sign a budget bill before exercising line item veto authority.

The following individuals testified:

NONE

Written testimony:

NONE

Commissioner Tom proposed to amend Section 3-203.2. first sentence after the word signing, add the words "or not signing". Commissioner Mikulina stated he would support that amendment.

• **ACTION:**

Commissioner Tom moved to insert the words "or not signing" in Section 3-203.2 first sentence after the word signing. Commissioner Lendio seconded that motion. No discussion followed.

AYES:	TAKAKI, CHANG, COFFEE, GRAU, HIRANO, KAWASHIMA, LENDIO, MIKULINA, PACOPAC, SULLIVAN, TOM - 11
NOES:	NONE - 0
EXCUSED:	MEDER, MYERS – 2

PROPOSAL 54 - Ordinances; Clarify that amendments to existing codified ordinances may be made by the City Council by reference to the codified provisions, rather than by reference to the numbered ordinances that may be enacted.

The following individuals testified:
NONE

Written testimony:
NONE

Commissioner Mikulina commented he thinks this could be a housekeeping amendment.

PROPOSAL S-10 - Public notices; Distribution of public notices via a widely accessible electronic medium.

The following individuals testified:
NONE

Written testimony:
NONE

Commissioners present did not have any amendment to Proposal S-10

CATEGORY E - ELECTIONS AND REPRESENTATION

PROPOSAL 5 - Elections; Eliminate the first special election when there are only two candidates for an office.

The following individuals testified:
NONE

Written testimony:
NONE

Commissioners present did not have any amendment to Proposal 5

4. Committee Reports

- a. Report of the Budget Committee – No Report
- b. Report of the Submission and Information Committee – No Report
- c. Report of the Personnel Committee – No Report
- d. Report of the Rules Committee – No Report

5. Officers Reports

- A. Chair – Chair had no report.
- B. Vice Chair – Commissioner Mikulina had no report.
- C. Treasurer - Commissioner Myers had no report.
- D. Secretary – Commissioner Pacopac had no report.

6. Announcements

NONE

7. Next Meeting Schedule

The next meeting was set for Tuesday, May 2, 2006 at 2:00 p.m. in the Council Committee Room.

8. Adjournment

Meeting was adjourned at 6:59 p.m.